TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Other Authorities

SUPPLEMENTAL STATEMENT OF FACTS

Relator, Broadway-Washington Associates, Ltd. ("BWA," hereinafter), desires to

supplement the Statement of Facts in its Opening Brief in light of factual matters stated in the Brief filed on behalf of respondent by the Tax Increment Financing Commission of Kansas City ("TIF," hereinafter) and the Brief of *Amicus Curiae* Dale E. Fredericks, Carol J. Fredericks, The Dale E. Fredericks IRA Rollover Account and Sangamon Associates, Ltd. (collectively, "Fredericks," hereinafter):

1. TIF implies at various points in its Brief that the underlying condemnation action was filed five (5) years to the day following adoption by the Kansas City City Council of the authorizing ordinance, Ordinance No. 991015 (effective September 12, 1999), because of protracted, unsuccessful "negotiations" between TIF and BWA, which negotiations were impeded by on-going "litigation" between BWA and Fredericks. **Respondent's Brief at pp. 8, 14 & fn. 1, 15; Fredericks' Brief at p. 9; see also Suggestions in Support of TIF Commission's Motion to Clarify or Dismiss Preliminary Writ at p. 2.** In fact, TIF filed a prior condemnation action involving BWA's real property on March 11, 2000. **Petition in Condemnation (Appendix to Reply Brief for Relator at A-1 - A-18).** TIF abandoned this condemnation on May 11, 2001, following the filing of the condemnation commissioners' report and award. **Report of Condemnation Commissioners (filed April 24, 2001) (Appendix to Reply Brief for Relator at pp. A-19 - A-24); Election to Abandon Condemnation (Appendix to Reply Brief for Relator at A-25 - A-26).** Following abandonment of this first condemnation action, TIF was obligated to wait two (2) years before initiating another condemnation involving BWA's property. **§523.040, RSMo.** Here,

that period ended in May 2003.

2. Prior to entry of his Judgment of Condemnation, BWA brought to respondent's attention the issues regarding (1) proper authorization of TIF's condemnation by the Kansas City City Council; (2) the failure of TIF to comply with the statutory requirement of making BWA an unconditional offer of purchase prior to initiation of condemnation proceedings; (3) the omission of a record owner from the condemnation petition; and, (4) the failure of the Kansas City City Council to make all required statutory findings. **Defendants Proposed Findings of Facts, Conclusions of Law, and Judgment, at pp. 4, 5-7, 7-8, and 11-18 (Appendix to Reply Brief for Relator A-30, A-31 - A-33, A-33 - A-34, A-37 - A-44).**

ARGUMENT

I

RELATOR IS ENTITLED TO AN ORDER PROHIBITING

RESPONDENT FROM TAKING ANY FURTHER ACTION IN THE UNDERLYING MATTER OTHER THAN DISMISSING THE PETITION IN CONDEMNATION BECAUSE THE AUTHORITY OF THE TAX INCREMENT FINANCING COMMISSION TO PROCEED WITH CONDEMNATION OF RELATOR'S REAL PROPERTY HAS LAPSED AND EXPIRED AND RESPONDENT WAS THEREFORE WITHOUT JURISDICTION TO ENTER HIS JUDGMENT OF CONDEMNATION IN THAT THE TAX INCREMENT FINANCING COMMISSION HAD ONLY FIVE (5) YEARS FROM THE DATE THE KANSAS CITY CITY COUNCIL ADOPTED ORDINANCE NO. 991015, OR SEPTEMBER 13, 1999, WITHIN WHICH TO "ACQUIRE[] BY EMINENT DOMAIN" RELATOR'S PROPERTY, §99.810.1(3), RSMO., AND THE TAX INCREMENT FINANCING COMMISSION HAD NOT "ACQUIRED" THE PROPERTY BY SEPTEMBER 13, 2004, BUT MERELY COMMENCED THE LEGAL PROCEEDINGS NECESSARY TO DO SO ON OR ABOUT

THAT DATE.

TIF, on behalf of respondent, argues that the construction of **§99.810.1(3), RSMo.** BWA urges on this Court "ignores logic, produces absurd results, misconstrues the statutory language, and disregards. . . other rules and statues [sic] which govern the condemnation process." **Brief on Behalf of Respondent ("Respondent's Brief," hereinafter) at p. 11.** At bottom, TIF's contention is that the Legislature could not have intended to require that a condemning authority proceed any further than merely filing a petition in condemnation - - initiating the "process of obtaining property," **id. at p. 19** - - within five (5) years of the date of adoption of the authorizing ordinance because it is simply not possible for a condemnation action to progress to the point where the property is "acquired" or "taken" by the condemnor that quickly. TIF's position is specious on its face, and indeed amounts to an insult to the trial judges of this State, whom TIF implies have neither the power nor the ability to control their own dockets and dispose of condemnation cases in a timely fashion.

In fact, a reading of **§99.810.1(3), RSMo.**, that requires commissions created under the **Tax Increment Financing Allocation Act, §§99.800-.865, RSMo.**, to have both initiated condemnation proceedings and have prosecuted such proceedings to the point of acquiring title to the affected real property within five (5) years of adoption of the authorizing ordinance is compelled by the plain language of the statute, and is neither illogical in the abstract nor impossible in actual operation. Rather, it represents an appropriate balance - - struck by our General Assembly - - between the interests of the private land-owner in the continued possession and use of his or her property, free from the

threat of long-delayed condemnation actions, and the interest of the public as reflected by a City Council determination that circumstances exist which warrant the exercise of one of government's most sweeping powers: eminent domain. So appropriate is this balance that the recent special task force appointed by Governor Blunt suggested extending the statutory régime established in **§§99.800-.865, RSMo.**, to other condemnation proceedings involving matters of "blight" and economic development. **See Final Report and Recommendations of Missouri Eminent Domain Task Force, http://www.mo.gov/mo/eminentdomain (Dec. 30, 2005), at p. 23**.

Here, TIF only filed its Petition in Condemnation within the five-year period required by **§99.810.1(3), RSMo.**, and did so at the outermost margin of that period. **Petition for Writ of Prohibition at ¶3.** The "acquiring" or"taking" of BWA's real property occurred some six (6) years and three (3) months after adoption of the authorizing ordinance. **Respondent's Brief at p. 9.** Therefore, the respondent's action in entering his Judgment in Condemnation was clearly in excess of his jurisdiction and the Preliminary Order in Prohibition should be made peremptory and absolute.

A. The Expiration of TIF's Legislative Grant of Authority To Proceed with Condemnation After Five (5) Years is Not Illogical, Nor does it Produce Absurd Results.

BWA agrees with TIF, of course, that one of the canons of statutory construction articulated by this Court is that the General Assembly is presumed to have intended that the

language it selected for its enactments would produce a logical, reasonable result. **See Murray v. Missouri Highway & Transportation Commission, 37 S.W. 3d 228, 233-34 (Mo. 2001).** "Construction of statutes should avoid unreasonable or absurd results." **Id. at 233.** Moreover, BWA agrees that this Court will not presume the Legislature to have intended a "meaningless" or "useless" act. **See City of Willow Springs v. Missouri State Librarian, 596 S.W. 2d 441, 444-445 (Mo. 1980).** While these principles are certainly valid, they are of no aid to TIF herein.

First, TIF asserts that BWA's construction of **§99.810.1(3), RSMo.,** is "illogical" because it would compel condemning authorities to "shorten negotiations" and "file [condemnation] actions almost immediately." **Respondent's Brief at 13.** TIF states that this is necessary to avoid the risk that a condemnation action could be filed "within a few days of the effective date of the [authorizing] ordinance" and not be "completed within five years." **Id. (emphasis added).** In so arguing TIF misstates BWA's position: **§99.810.1(3)** does not mandate completion of the condemnation action within five (5) years, only that the condemning authority have, as the statute plainly states, "acquired" the property within that time, i.e., that the award of the condemnation commissioners be paid into the trial court registry. **See Opening Brief for Relator at pp. 17-29.** Thus, the two Missouri cases to which TIF directs the Court's attention - - **State ex rel. Missouri Highway & Transportation Commission v. Moulder, 726 S.W. 2d 812 (Mo. App., S.D., 1987)**, and **Land Clearance for Redevelopment Authority v. Dehco, Inc., 773 S.W. 2d 883 (Mo.**

App., E.D., 1989) - - have absolutely no relevance to the construction of the statute BWA proposes. In both cases, there is a prolonged delay between initiation and completion of condemnation proceedings; the delay, however, involved the trial on damages. **Moulder, 726 S.W. 2d at 814; Dehco, Inc., 773 S.W. 2d at 884.** In **Dehco**, for example, only eleven (11) months elapsed between the date the condemnation petition was filed and the date the commissioners' award was paid into court. **Dehco, Inc., 773 S.W. 2d at 884.**[1]

Even if **§99.810.1(3), RSMo.**, required "completion" of the condemnation process within five (5) years of adoption of an authorizing ordinance (the position TIF disingenuously ascribes to BWA), that would not be "illogical." This Court has adopted time standards for the disposition of cases by the trial courts of Missouri. **See Supreme Court Operating Rules 17.20-.25.** A condemnation proceeding is a "circuit civil" matter as defined by **Operating Rule 17.29**. This Court's **Operating Rule 17.23** contemplates that 98% of "circuit civil" matters would be fully concluded within twenty-four (24) months of initial filing. While the 16th Judicial Circuit has not met this standard for case disposition, the most recently available statistics show that fully 80% of "circuit civil" matters filed in

[1] TIF also cites a decision from Illinois, **Jedlicka v. State, 24 Ill. Ct. Cl. 52 (Ill. Ct. Cl. 1961).** **See Respondent's Brief at 13.** As TIF does not attempt to show whether Illinois' condemnation procedures some forty-five (45) years ago (or Illinois' procedures today) have any similarity to Missouri's procedures, the Court may disregard this "authority."

both the Circuit and in Jackson County are disposed of within twenty-four (24) months of filing. **See Office of State Courts Administrator, Missouri Judicial Report Supplemental for Fiscal Year 2005, at pp. 202, 212.**

This Court's time standards and the statistical performance of the Jackson County Circuit Court demonstrates that even the more stringent standard - - complete disposition of a condemnation action, through the trial on exceptions to the award of the condemnation commissioners - - would not have been "illogical" or "unreasonable," had that been the Legislature's will and intention. Nonetheless, TIF claims that it is impossible for condemnation proceedings to progress even to the point of paying the commissioners' award within that time-frame. This is nonsense. Once filed, the progress of a condemnation case, like any other litigation matter, is not controlled exclusively by the parties. Trial judges in Missouri have the means and the ability to police their dockets, and to dispose of cases efficiently and expeditiously. Frankly, TIF's suggestion to the contrary - - that no trial judge could nudge the parties to a condemnation matter along to the point where commissioners' award is paid and the property "acquired"by the condemnor within five (5) years - - is an insult to the Trial Bench of this State.

Second, TIF contends that BWA's construction of **§99.810.1(3), RSMo.**, creates an unreasonable risk that condemning authorities will seek to acquire more property than is actually necessary for a given public purpose, and wait until after the trial on damages to determine whether to abandon the condemnation. **Respondent's Brief at pp. 14-15.** If, in the interim, the property owner has withdrawn the commissioners' award from the court

registry (and reinvested it, or otherwise dissipated the money), the landowner might be hard-pressed to return the award to the condemnor. **Id.** Such a risk, however, inheres in every condemnation proceeding where the landowner elects to withdraw the commissioners' award. **See, e.g., State ex rel. Behle v. Stussie, 826 S.W. 2d 71, 72-73 (Mo. App., E.D., 1992)** (discussing condemnor's concern that landowner might be unable to repay deficiency following jury trial on exceptions to commissioners' award; noting that condemnor always has "simple expediency of not depositing the money in the registry of the court and deferring acquiring [possession of] the land" if concerned about financial responsibility of landowner). It is difficult to see how BWA's construction of the statute affects that risk, either to enhance or diminish it.

Third, TIF contends that BWA's construction of the statute creates an "unfair" advantage for landowners whose property is condemned "later" rather than "earlier" as a part of a plan for redevelopment of an area involving multiple tracts and multiple landowners. **Respondent's Brief at p. 15.** Again, this is a risk inherent in all exercises of the power of eminent domain where multiple landowners are involved, and indeed to private land development projects as well. Newspapers and local television news broadcasts are replete with stories of exorbinate amounts of money paid to "hold-out" property owners in order to complete large, urban redevelopment projects. Again, TIF is simply being disingenuous in contending that BWA's proposed construction of **§99.810.1(3), RSMo.**, somehow increases this "risk" or creates a new "advantage" for one class of landowners.

Finally, TIF argues that it is "absurd" to posit a Legislative intent to require a

condemning authority both to intiate condemnation proceedings and prosecute those proceedings with sufficient diligence that the condemnation commissioners' award is paid into court and the property "acquired" by the condemnor within five (5) years of adoption of an authorizing ordinance because a property owner may "abuse" the litigation process, and "delay" himself or herself out of court. **Respondent's Brief at pp. 15-18.** TIF states that the progress of the lawsuit before respondent underlying the instant writ application is "a good example of the numerous types of delays" that can arise in a condemnation matter. **Id. at p. 16.** The not-so-thinly-veiled implication is that BWA has been an uncommonly obstreperous litigant in the trial court, and has done virtually everything it could to impede the efficient prosecution and disposition of this case. **Id. at pp. 16-18.**

It is true that BWA has been vigorous in its defense of the underlying condemnation matter. Notwithstanding the various (legitimate and appropriate) procedural and substantive matters that have occupied the time and attention below of respondent, BWA, and TIF, the Court will observe that the total time elapsed between filing of TIF's condemnation petition and payment of the commissioners' award herein (TIF, thus, "acquiring" BWA's property) is thirteen (13) months. **See Respondent's Brief at pp. 16-18.** Of itself, this fact shows that TIF's claim that it would be "absurd" for the Missouri General Assembly to have intended the "impossible" result that a condemning authority "acquire" the relevant real property with five (5) years of adoption of the ordinance authorizing the condemnation is specious.

Moreover, although TIF implies that it was forced to wait to the very end of the five-year period to file its Petition in Condemnation because of protracted, unsuccessful

"negotiations" with BWA, which negotiations were hampered by on-going "litigation" between BWA and Fredericks, **see Respondents' Brief at pp. 8, 14 & fn. 1, 15; see also Suggestions in Support of TIF Commission's Motion to Clarify or Dismiss Preliminary Writ at p. 2**, the primary source of delay was TIF's own action in commencing and then abandoning a prior condemnation action involving BWA's real property. The first condemnation action was filed on March 11, 2000, within six (6) months of the adoption of the authorizing Ordinance by the Kansas City City Council. **See Petition in Condemnation (Appendix to Reply Brief for Relator at A-1 - A-18).** Some thirteen (13) months after this initial petition was filed, the condemnation commissioners filed their report, setting forth the amounts of their award. **See Report of Condemnation Commissioners (Appendix to Reply Brief for Relator at pp. A-19 - A-24).** Within a month, TIF had abandoned this first proceeding, **see Election to Abandon Condemnation (Appendix to Reply Brief for Relator at A-25 - A-26)**, triggering the requirement that TIF wait two (2) years prior to re-filing a condemnation action involving the same property. **§523.040, RSMo.** This period of disability ended in May 2003. Nonetheless, TIF waited until September 2004 to re-file the underlying condemnation action, now pending before respondent.

TIF's failure to be candid about this procedural history is understandable. It is evident that TIF's contention that it is "impossible" for a condemnation action to be filed and prosecuted through to the point where the condemnor "acquires" the condemned property by payment of the commissioners' award into court is specious because here there was sufficient

time for TIF to have done so not once, but twice. Even with the two-year disability of **§523.040, RSMo.**, even with the various procedural issues raised by BWA in the trial court to (as TIF implies) somehow "delay [BWA] out of court," had TIF acted in a timely fashion to re-file its petition, the commissioners award could have been paid before the expiration of its authority to proceed in condemnation five (5) years following adoption of Ordinance No. 991015.

B. The Plain and Ordinary Meaning of the Language of **§99.810.1(3), RSMo.**, Shows that It is Not a Mere Statutory Limitations Period.

TIF completely ignores the canons of statutory construction most relevant to the Court's consideration of the Legislature's use of the term "acquired" in **§99.810.1(3), RSMo.**: (1) that the General Assembly is presumed to legislate with knowledge of existing law, **see Greenbriar Hills Country Club v. Director of Revenue, 47 S.W. 3d 346, 352 (Mo. 2001)**; and, (2) when the General Assembly enacts a statute with "terms which have had other judicial or legislative meaning attached to them," the Legislature is "presumed to have acted with knowledge as that judicial or legislative" meaning. **See Citizens Electric Corporation v. Director of Revenue, 766 S.W. 2d 450, 452 (Mo. 1989).** Here, the term "acquire" has a particular meaning in the context of condemnation proceedings - - it means to "take title to" and is synonomous with the date of "taking," the date upon which the condemnor pays the amount of money awarded by the condemnation commissioners into

court. **Mo. Const. Art. I, §26; State ex rel. Missouri Highway Commission v. Starling Plaza Partnership, 832 S.W. 2d 518, 520 (Mo. 1992); State ex rel. State Highway Commission v. Deutschman, 142 S.W. 2d 1025,m 1028 (Mo. 1940).** This has been the definition of when real property is "acquired" or "taken" by a condemnor in this State for at least 130 years.[2] Thus, the Legislature can and should be held by this Court to have used the

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[2] TIF completely mischaracterizes BWA's Opening Brief when it asserts that BWA's "sole support" for the proposition that the word "acquire" has this unique, well-settled meaning in the context of eminent domain proceedings is the Final Report and Recommendations of the Missouri Eminent Domain Task Force. **Compare Respondent's Brief at p. 20 with Opening Brief for Relator at pp. 24-26.** As noted above (and in BWA's Opening Brief), there are numerous authorities supporting this proposition. Moreover, the casual reference made in the Task Force's Final Report suggesting that the operation of **§99.810.1(3), RSMo.**, relates to the filing of a petition in condemnation is of much less significance than the fact that the Task Force recognized and approved the Legislative balance between private and public interests struck by this provision, and the need to protect landowners from the uncertainty of long-threatened, long-delayed condemnation proceedings. **See Final Report and Recommendations of the Missouri Eminent Domain Task Force, http://www.mo.gov/mo/eminentdomain (December 30, 2005), at p. 23.** Most of the Task Force Members were laypersons, and not likely to be familiar with the precise judicial definition of the word "acquire" in this context.

term "acquired" in **§99.810.1(3), RSMo.**, in this same sense.

Certainly, this Court knows that when the General Assembly intends to create a mere statute of limitations or of repose - - a requirement that may be satisfied by the initiation of a lawsuit - - it knows how to do so. **See Butler v. Mitchell-Hugeback, Inc., 895 S.W. 2d 15, 19-20 (Mo. 1995)**. Indeed, most frequently the Legislature employs the common-sense and direct terminology "no action may be commenced" or may be had, maintained or brought" within a certain period of time. **See §§516.010-.500, RSMo. ("Chapter 516-Statutes of Limitations"); see also §33.120, RSMo. (claims against State must be "exhibited" to Commissioner of Administration); §140.590, RSMo. ("suit" on tax deed shall be "commenced" or "brought"); §290.450, RSMo. ("action" alleging wage and hour law violation "shall be instituted"); §511.250, RSMo. ("motion" to set aside judgment "shall be made"); §524.110, RSMo. ("commencement of the action").**

Rather, TIF states that the Court in construing **§99.810.1(3), RSMo.**, should employ a "dictionary" definition of the word "acquire," and then (incredibly) asserts that TIF's selected "dictionary" definition - - "to come into possession, ownership, or control" - - necessarily imports a "process" rather than an event. **Respondent's Brief at p. 19.** Of course, the Court knows that one "comes into possession [or] ownership" of a great many things by the expedient of exchanging money for the thing "acquired," and while this may sometimes denote a "process," most frequently it is an event. While this Court need not look beyond the settled meaning of "acquire" in the context of condemnation proceedings (i.e.,

the date of "taking"), the courts of this State recognize in other contexts this common-sense notion that property is "acquired" when money is paid therefor, **see Meservey v. Meservey, 841 S.W. 2d 240, 245 (Mo. App., W.D., 1992)** (discussing acquisition of marital property), or when possession of the property is obtained. **Shaffer v. Federated Mutual Insurance Co., 903 S.W. 2d 600, 607 (Mo. App., S.D., 1995)** (discussing insurance coverage). And in other States, as well, it appears that the word "acquire" in connection with condemnation matters has been held to refer to the time at which the condemnor takes title to or possession of the condemned property. **See 1A C.J.S., "Acquire" (1985)**.

Similarly misplaced is TIF's contention that **§99.810.1(3), RSMo.**, cannot require that a condemnation action be both filed and prosecuted to the point that the condemnor "acquires" title to the condemned real property because that would be inconsistent with other statutory rights of a condemnor, such as the right to abandon a condemnation action and re-file it after two (2) years. **Respondent's Brief at pp. 21-23; see §523.040, RSMo.** As shown above, however, TIF could easily have complied with this requirement in the underlying litigation, notwithstanding its own prior initiation and abandonment of condemnation proceedings. **See, *supra*, pp. 16 - 17.** Just as TIF's claim of impossibility is nonsense, so too is its claim of statutory inconsistency.

There can be no doubt that the word "acquire" in **§99.810.1(3), RSMo.**, should be construed to mean that a condemning authority must pay the condemnation commissioners' award into the trial court registry within five (5) years of the date of adoption of the relevant

authorizing ordinance. There is no dispute that TIF did not do so in the underlying litigation, but merely initiated the condemnation process at the very end of the five-year period. Therefore, respondent was without jurisdiction to enter his Judgment of Condemnation, and this Court should make its Preliminary Order of Prohibition absolute and peremptory.

C. BWA Had And Has the Authority to

Pursue An Extraordinary Writ in this Court.

If the Court considers Fredericks' Brief[3], it should reject the strained interpretation that Fredericks proposes in favor of the plain language of the binding agreement formed by the BWA partnership and followed by the partners since 1985. The BWA partnership agreement is an integrated agreement. It contains the sole agreement among the parties and supersedes all of the parties' written or oral understandings. **BWA Partnership Agreement, Article 9, Section 7 (Appendix to Opening Brief for Relator at A-102).** Fredericks' new allegation that there was some understanding between Dale Fredericks and Allan Carpenter beyond the confines of this document, **Fredericks Brief at p. 6**, cannot properly be considered by this Court, particularly in light of the integration clause. **Union Electric**

[3] The brief submitted by Fredericks is not a proper "*amicus curiae*" brief. **Rule 84.05(f)(2)**. It does not "support" Respondent's Brief. It merely adopts Respondent's Brief, and contains no additional arguments in favor of TIF's construction of **§99.810.1(3), RSMo.** And, of course, it does not "support"BWA's Brief. This Court may and should disregard Fredericks' Brief.

Company v. Fundways, Ltd., 886 S.W. 2d 168, 171 (Mo. App., E.D., 1994) (parol evidence not admissible to contradict terms of written contract and make ambiguous an otherwise unambiguous contract).

The language upon which Fredericks relies is a common divorce-oriented provision that prevents a "marital community" interest from being "managed by" someone other than Allan Carpenter or Dale Fredericks. **BWA Partnership Agreement, Article 1, Section 5 (App. at A-77).** When the Carpenter marital community ceased to exist, this provision no longer had relevance for the Carpenter 1985 Family Limited Partnership because the governing phrase "[t]o the extent the Partnership interest of any Partner is community property" was no longer applicable. **Id.** If Mr. Carpenter's widow had re-married (and thereby re-created a new marital community property interest that was necessarily not managed by Allan Carpenter), that event might well have led to Fredericks' suggested result. That did not happen.

The agreements' language embodies the concept that "the devil you know" is better than the one you do not know. An unpredictable new spouse of Mrs. Carpenter (or Mrs. Fredericks) was the "unknown" sought to be avoided by this provision. This unambiguous limiting phrase cannot simply be ignored and must be given meaning in this contract between two sophisticated businesses dominated by their lawyer members at the time of contracting. **Emerick v. Mutual Benefit Life Insurance Co., 756 S.W. 2d 513, 518 (Mo. 1988).**

Moreover, Allan Carpenter's death assuredly was not "an event constituting withdrawal of the Carpenter family partnership as a general partner." **See Fredericks' Brief**

at p. 8. The Carpenter 1985 Family Limited Partnership, did not die. A change of membership within the Carpenter 1985 Family Partnership is not addressed by Fredericks' cited authorities. **Id.; see §359.011(3), RSMo., §359.241, RSMo.**

If correct, Fredericks' view would constitute a tremendous windfall to Fredericks. His family partnership, Sangamon Associates, Ltd., contributed 25% of the initial capital to form BWA. The Carpenters contributed 75%. The Carpenter 1985 Family Limited Partnership, advanced all the costs for BWA to successfully defend over ten (10) years of meritless litigation initiated by Fredericks. As a general partner, the Carpenter 1985 Family Limited Partnership is entitled to be repaid first out of the proceeds of the partnership upon dissolution. **BWA Partnership Agreement, Article 3, Section 2(a) (App. at A-84).** If Fredericks were correct, Carpenter 1985 would lose that priority as a General Partner and would cede its share to Sangamon Associates. Carpenter 1985 would have a 75% interest in a multi-million dollar investment as to which it had no managerial authority. The BWA Partnership Agreement must be read as a whole and in this light. **Purcell Tire & Rubber Co., Inc. v. Executive Beechcraft, Inc., 59 S.W. 3d, 505, 510 (Mo. 2001)** (contract language must be viewed in the context of the contract as a whole).

No one but Fredericks would divine such a plan from this language, chosen by a California scrivener many years ago. Fredericks' suggestion simply makes no sense. BWA manifestly had and has the authority to pursue the instant application for Writ of Prohibition.

ARGUMENT

II

RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM TAKING ANY FURTHER ACTION IN THE UNDERLYING MATTER OTHER THAN DISMISSING THE PETITION IN CONDEMNATION BECAUSE THE TAX INCREMENT FINANCING COMMISSION WAS NEVER PROPERLY AUTHORIZED BY THE KANSAS CITY CITY COUNCIL TO CONDEMN RELATOR'S REAL PROPERTY IN THAT THE PROPERTY AREA DESCRIBED IN THE CONDEMNATION PETITION IS NOT WITHIN THE PROPERTY AREA DESCRIBED AS A "CONSERVATION AREA" IN ORDINANCE NO. 991015, THE LEGISLATION CLAIMED BY THE TAX

INCREMENT FINANCING COMMISSION TO AUTHORIZE THE CONDEMNATION PROCEEDINGS BEFORE RESPONDENT.

TIF continues to insist that this Court's consideration of the instant Application for Writ of Prohibition is limited to the single issue of the proper construction of **§99.180.1(3), RSMo. See Respondent's Brief at 23-24.** The basis for so contending is a very narrow reading of **Rule 84.22**, such that a party is not only required to seek extraordinary writ relief from the lower courts before requesting it from this Court, the party is also required to advance each and every argument in favor of the requested relief below. That simply is not the law, and none of the authorities to which TIF directs the Court's attention so provide. This Court is free to consider any basis for restraining respondent's action in clear excess of his jurisdiction that this Court may choose to consider.

In any event, BWA brought to the attention of respondent, prior to his entry of the Judgment of Condemnation, each of the deficiencies alleged in the Petition for Writ of Prohibition and argued in BWA's Opening Brief. **See Defendants' Proposed Findings of Fact, Conclusions of Law, and Judgment at pp. 4, 5-7, 7-8, and 11-18 (Appendix to Reply Brief at A-30, A-31 - A-33, A-33 - A-34, A-37 - A-44).** Thus, BWA cannot be said to have unfairly denied respondent an opportunity to consider these issues.

Substantively, TIF contends that whatever deficiency may have existed in the legal descriptions set forth in Ordinance No. 991015, those were cured at the hearing before respondent because TIF introduced evidence that at some point BWA's property was

included within the area authorized by the Kansas City City Council for redevelopment, as shown on a "map." **Respondent's Brief at p. 25; Appendix to Brief for Respondent at pp. A-57 - A-59, A-60.** BWA will observe only that **§99.820.1(3), RSMo.**, requires that the redevelopment area be established by "ordinance," not by "map." Logically, testimony such as that proffered by TIF's witness at the condemnation hearing before respondent did not and could not correct a failure by the City Council to include BWA's property in the relevant authorizing Ordinance.

Again, respondent's Judgment of Condemnation was in clear and manifest excess of jurisdiction. Therefore, this Court's Preliminary Order of Prohibition should be made peremptory and absolute.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Realtor's Opening Brief, relator asks this Court to make its Preliminary Order of Prohibition absolute and peremptory, directing respondent to refrain from taking any acts in furtherance of the Judgment of Condemnation other than dismissing the Petition in Condemnation with prejudice forthwith.

Respectfully submitted,

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ATTORNEYS FOR BROADWAY-
WASHINGTON ASSOCIATES, LTD.

February 10, 2006

CERTIFICATE OF COMPLIANCE

I, W. EDWARD REEVES, attorney for relator herein, do hereby certify the following:

1. The Reply Brief for Relator includes the information required by **Rule 55.03**;

2. The Reply Brief for Relator complies with the limitations contained in **Rule 84.06(b)**;

3. The Reply Brief for Relator contains 5,518 words; and

4. The floppy disk containing the Reply Brief for Relator is double-sided, high density, IBM-PC-compatible 1.44 MB, 3½ inch size, has been scanned for viruses and is virus-free, and was prepared using Corel Word Perfect 8.0.

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